

CALIFORNIA REGIONAL WATER QUALITY CONTROL BOARD  
CENTRAL VALLEY REGION

RESOLUTION NO. R5-2005-XXXX

REFERRAL TO THE ATTORNEY GENERAL FOR CIVIL LIABILITY  
FOR  
HILMAR CHEESE COMPANY, INC.  
AND  
HILMAR WHEY PROTEIN, INC.  
STANISLAUS COUNTY

WHEREAS, Hilmar Cheese Company, Inc. and its wholly owned subsidiary, Hilmar Whey Protein, Inc., (collectively, "Hilmar") are privately held California corporations that own and operate a Cheese Processing Plant (hereafter "Plant") about one-half mile north of the unincorporated community of Hilmar in Stanislaus County. Hilmar discharges cheese processing wastewater from its cheese pit and lactose pit to the "Primary Lands," adjacent to the Plant.

WHEREAS, the discharge is regulated by Waste Discharge Requirements (WDRs) Order No. 97-206 and Cleanup and Abatement Order No. 2004-0722 (hereafter "CAO"). Since March 2001, Hilmar has also provided treated wastewater to other persons for irrigation of "Secondary Lands" near the Plant.

WHEREAS, (1) Hilmar's self-monitoring reports document 1,039 days of violation of the discharge effluent limit of 900 micromhos per centimeter ( $\mu\text{mhos/cm}$ ) for EC prescribed by WDRs Order No. 97-206 for discharges to Primary Lands; (2) Hilmar's self monitoring reports document that on those 1,039 days, Hilmar discharged 821,000,000 gallons of wastewater to the Primary Lands; and (3) on those 1,039 days, Hilmar discharged waste or caused or permitted waste to be deposited where it was discharged into waters of the state; and

WHEREAS, on 26 January 2005, the Executive Officer for the California Regional Water Quality Control Board, Central Valley Region (Regional Board) issued Administrative Civil Liability (ACL) Complaint No. R5-2005-0501 to Hilmar, Hilmar Cheese Company Properties Partnership (HCCPP) and Kathy and Delton Nyman, dba Delton Nyman's Farm. The ACL Complaint was later withdrawn as to HCCPP and Kathy and Delton Nyman, dba Delton Nyman's Farm.

WHEREAS, in response to the Civil Liability Complaint, discovery by the parties to the administrative action has been extensive, time-consuming, and resource intensive, and more commensurate with a judicial proceeding. That level of involvement will likely continue through and after the date of the hearing when the Regional Board will consider the Administrative Civil Liability; and

WHEREAS, with respect to this hearing Hilmar has requested 1) a one- to two-week hearing before the Board or a three-member hearing panel, 2) the right to submit post-hearing legal briefs, 3) the right to comment on a tentative order prepared after the hearing, and 4) the right to conduct additional discovery after the prosecution staff submits its final staff report and evidence to the Board. After the Chair denied these requests, the discharger filed a written motion for reconsideration, which staff has opposed. Hilmar also filed a motion requesting a formal hearing and assignment of an administrative law judge, and prosecution staff submitted a written opposition. In its papers, Hilmar has also alleged that the Executive Officer, the Regional Board or some of its members may be biased; and

WHEREAS, Water Code Section 13350(g) authorizes the Regional Board, after a public hearing, to request the Attorney General to petition the Superior Court to impose, assess, and recover civil liability for violations as specified in the Water Code Division 7; and

WHEREAS, the Regional Board held a public hearing on 24 June 2005, considered all testimony and evidence, and determined that it was appropriate to request the Attorney General to petition the superior court to impose, assess, and recover civil liability against Hilmar for violations of Waste Discharge Requirements Order No. 97-206, Cleanup and Abatement Order No. 2004-0722 and other violations subject to civil liability; Therefore, be it

**RESOLVED** that the Regional Board requests the Attorney General, in consultation with the Executive Officer, petition the superior court to impose, assess, and recover civil liability against Hilmar for alleged violations of Waste Discharge Requirements Order No. 97-206, Cleanup and Abatement Order No. 2004-0722 and other violations subject to civil liability. Upon the referral, the Executive Officer is directed to withdraw the ACL Complaint No. R5-2005-0501.

I, THOMAS R. PINKOS, Executive Officer, do hereby certify the foregoing is a full, true, and correct copy of a Resolution adopted by the California Regional Water Quality Control Board, Central Valley Region, on 24 June 2005.

Executive Officer

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THOMAS R. PINKOS,